



LET'S TALK CONTRACTS



Too often we see disputes arise between client and kitchen company because a contract has not been signed between the parties. Although contracts can be tedious to work through they are vital for a clear understanding of the responsibilities and obligations between the parties.

We asked the KSA's legal consultant to tell us a little more about why having a good contract signed and in place is so important:

Written contracts are vital when entering into any sort of agreement, as they regulate the entire relationship between the parties. They provide a sense of clarity and certainty, in that the rights, duties and obligations of the parties are set out in the document. A properly drafted contract avoids any surprises.

In the event of any uncertainty, one merely has to turn to the written contract, in which the position of certainty will be defined. Written contracts go further than just setting out the relationship between the parties, they also protect parties against those that do not toe the line, and are enforceable in a court of law. Engaging in business in terms of a written contract exhibits a mark of professionalism by the contracting parties.

At the end of the day, entering into agreements in the absence of a valid written contract is a recipe for disaster that will in all likelihood end up in expensive, protracted litigation, trying to enforce verbal agreements.

There is an age old legal principle that people frequently overlook, namely, "signer beware". When you sign a contract, the law assumes that you have read it and understand all the terms. There is no wiggle room to complain after signature if the contract contains terms that prejudice you.

When consumers engage with suppliers, there is a presupposition that the supplier is in an unfair bargaining position, which enables him to take advantage of the consumer.

The Consumer Protection Act 68 of 2008 ("The Act") constitutes one of the first pieces of legislation designed to regulate unfairness in contracts. The Act seeks to regulate that contracts have terms and conditions that respect the consumer's right to fair, just and reasonable terms and conditions.





Consumers cannot be required to:

- waive any rights,
- assume any obligations, or
- waive any liabilities of the supplier, on terms that are unfair, unjust or unreasonable.

The Act deals with prohibited transactions, agreements, terms or conditions. Entrenching the notion of fairness, justness and reasonableness, by disallowing:

- Excessively one-sided in favour of any person other than the consumer;
- Terms and conditions that are so adverse to the consumer as to be inequitable; or
- Terms and conditions that are deceiving, false, fraudulent, misleading and/or unlawful.

Any such terms and conditions will generally be void, and therefore unenforceable.

When entering into a written contract, parties thereto should beware of numerous clauses, terms and conditions:

- Language that is undefined, controversial and/or vague should raise eyebrows as it may well open a window of uncertainty;
- Contracts that lack plain and understandable language may have more to them than the eye sees. This may result in a less careful party being bound to a contract with terms and conditions that he never intended to be in the contract;
- Where a contract contains a “voetstoots” clause, the buyer must ensure that he has inspected the item purchased, because to buy “voetstoots” means that you have satisfied yourself as to the condition of the item. Unless the seller knows about a particular defect and has not told the buyer, the buyer has no recourse;

- Clauses accelerating payment where an instalment is missed can have dire consequences.
- A suretyship means you are guaranteeing that if a party to a contract does not pay, the surety will pay in place of the person primarily liable for the debt. The general rule is never sign such an agreement.
- When products or services are the subject of the contract, you need to make sure you are well acquainted with the clauses dealing with product guarantees on the product or service. Generally the written guarantees limit the consumer’s rights, by taking away the rights you have by simple operation of law.
- Lastly, any time periods in terms of a written contract must be strictly complied with, as a default will generally result in a breach of the contract.



In short, your contract with your kitchen company protects both the consumer and the company ensuring both parties stick to their side of the deal. It is vitally important that you go through the fine details of the contract before signing and if you are unsure of any of the clauses or the implications of a clause that you get the kitchen company to explain them to you in detail. Should you still be unsure allow your attorney to go through the document before signing it. This will go a long way to avoiding disputes, because your attorney will explain your rights, duties and obligations. Should the parties agree to any changes or additions to the contract it is vital that these are done in writing and signed by both parties so that these changes are clearly noted and understood.

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